

Cause No. 202266512**LEONIDA BUTCHER,
INDIVIDUALLY AND DBA JC LION
PROPERTIES, JIMMY BUTCHER,
AND JAMES BUTCHER,****Plaintiffs****v.****THE FROST NATIONAL BANK, and
MARGARET MCCARTY YOUNG****Defendants****§ IN THE DISTRICT COURT OF****§****§****§****§****§****§****§****§****§****§****§****§****§****HARRIS COUNTY, TEXAS****152nd JUDICIAL DISTRICT****PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION**

LEONIDA BUTCHER, INDIVIDUALLY AND DBA JC LION PROPERTIES, JIMMY BUTCHER, AND JAMES BUTCHER ("Plaintiffs"), file this action complaining of Defendants, THE FROST NATIONAL BANK and MICHAEL ALLEN FRANKLIN. Plaintiffs plead for a declaratory judgment, and a judgment removing the cloud on certain Properties, and damages.

In support hereof, Plaintiffs would show the Court as follows:

DISCOVERY-CONTROL PLAN

Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3.

CLAIM FOR RELIEF

Plaintiffs seek monetary relief of \$100,000 or less and nonmonetary relief.

PARTIES

Plaintiffs are individuals residing in Harris County, Texas. JC Lion Properties is an assumed name of Plaintiff Leonita Butcher.

Defendant THE FROST NATIONAL BANK is a state banking association with its principal office in San Antonio, Texas, Bexar County, Texas. THE FROST NATIONAL BANK has filed an answer herein.

Defendant MICHAEL ALLEN FRANKLIN has intervened into this action, and he will be served by sending this amended petition to his attorney of record.

JURISDICTION AND VENUE

The subject matter in controversy is within the jurisdictional limits of this Court.

Venue is proper in Harris County, Texas, pursuant to Section 15.001 of the Texas Civil Practice and Remedies Code because this action involves real property, and the property is located in Harris County, Texas.

FACTS

In 1996, shortly after moving to Texas, Leonida Butcher and her spouse James Butcher made an oral agreement between one another, agreeing that whatever real property investments they purchased would be exclusively and solely managed and controlled by Leonida Butcher. The couple has honored and kept that agreement faithfully since the time they made the agreement.

In 2009, when Leonida Butcher opened her business bank account with Chase Bank, she ensured that she is the sole owner and signer on the bank account.

In 2014, Leonida Butcher filed an assumed name certificate in Harris County, for JC Lion Properties. Plaintiff James Butcher is not listed on the current JC Lion Properties assumed name certificate.

In this suit, Plaintiffs are asking for a declaratory judgment pursuant to the Texas Family Code, Section 3.203, regarding the nature of certain real property located in Harris County. Plaintiffs seek a judgment ruling that certain property is not subject to execution for two money judgments, which Defendants have against Plaintiff James Butcher only.

The Four Properties in Issue¹

17250 El Camino Real, Webster, Texas 77058

On April 8, 2002, Plaintiffs acquired the property with the address of 17250 El Camino Real, Webster, Texas 77085. The Deed is recorded under Harris County Clerk's file number **V738773**. The deed references the grantees as "James D. Butcher and wife Leonida Butcher and Jimmy Lee Butcher, as single person."

2234 NASA Road 1, Seabrook, Texas 77586

On December 10, 2002, Plaintiffs acquired the property with the address of 2234 NASA Road 1, Seabrook, Texas 77586. The Deed is recorded under Harris County Clerk's file number **W307730**. The deed references the grantees as "James D. Butcher and Leonida Butcher and Jimmy Butcher, d/b/a JC Lion Properties."

3222 Burke Rd, Pasadena, Texas 77504

¹ Leonida Butcher and James Butcher also own 480 Kirby Road, Seabrook, Texas 77586. However, that property is their Homestead Property and is also not subject to execution.

On September 24, 2003, Plaintiffs acquired the property with the address of 3222 Burke Rd, Pasadena, Texas 77504. The Deed is recorded under Harris County Clerk's file number **X069729**. The deed references the grantees as "Leonida Limas Butcher, individually, James Douglas Butcher, individually, and Jimmy Lee Butcher, individually, all d/b/a JC Lion Properties."

2514 Perez Rd, Pasadena, Texas 77502

On May 15, 2008, Plaintiffs acquired the property with the address of 2514 Perez Rd, Pasadena, Texas 77502. The Deed is recorded under Harris County Clerk's file number **20080276407**. The deed references the grantees as "James Douglas Butcher and Leonida Butcher."

JC Lion Properties

Pursuant to the Texas law, Leonida Butcher, does business as JC Lion Properties. All of the Properties listed above are solely managed and controlled by JC Lion Properties and are beyond the reach of Plaintiff James Butcher.

Defendant's Judgments against James D. Butcher.

In January 2012, and in January 2014, in matters unrelated to the Properties referenced above, Defendants obtained, or are now the owners of, certain judgments against Plaintiff James Butcher only. In each of the referenced judgments, there are other Judgment Debtors besides James Butcher.

Those suits were not against Plaintiff Leonida Butcher, dba JC Lion Properties, or Jimmy Butcher. Nor were the suits based on any tortious conduct.

Defendants abstracted their 2012 and 2014 judgments, and filed an abstract of judgment in the Harris County Records in September 2012 and June 2014, respectively.

In November 2021, Defendant Frost Bank filed a new abstract of judgment relative to its 2012 judgment against James Butcher, in an attempt to renew its 2012 judgment.

By filing their abstracts of judgments, Defendants have improperly attempted to attach their abstracts of judgments to properties that James Butcher does not control or manage. Defendants are improperly attempting to lien the property interests of unrelated persons, against which it has no judgment. The purported judgment liens against Plaintiff Leona Butcher dba JC Lion Properties and Plaintiff Jimmy Butcher cloud their title and infringes on their property rights.

Neither Leonida Butcher nor Jimmy Butcher have any business relationship with either of the Defendants, and Jimmy Butcher has never done business with Defendants in any capacity.

As previously stated, pursuant to Plaintiffs' marital agreement, Leonida Butcher exclusively and solely controls and manages the four properties listed above. Even though James Butcher's name is on the four properties, those properties are exclusively and solely controlled and managed Leona Butcher dba JC Lion Properties. James Butcher is simply an accommodation party on the deeds because of certain loan documents on the Properties.

Further, it is clear that the Defendants' judgments cannot reach Jimmy Butcher's interest in the four properties at issue, although the abstracts of judgments do cloud his title on the referenced properties.

CAUSES OF ACTION

- ***Suit for Declaratory Judgment***

Plaintiff hereby incorporates all the above paragraphs herein, as if fully set forth here.

Pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, Plaintiffs Leonida Butcher, dba JC Lion Properties, seeks a declaration that the properties are special community property, as between her and James Butcher, and that Leonida Butcher controls those properties to the exclusion of James Butcher. Further Jimmy Butcher seeks a declaration that his interest in the properties is not subject to the referenced judgments; that James Butcher has no control over the referenced properties; that the properties are not burdened by a judgment lien; and that Defendants may not reach, sell, or attach the four properties at issue, through a writ of execution or otherwise.

Plaintiffs seek this declaration pursuant to Texas Family Code, Section 3.203, which provides as follows:

Sec. 3.203. ORDER IN WHICH PROPERTY IS SUBJECT TO EXECUTION. (a)

A judge may determine, as deemed just and equitable, the order in which particular separate or community property is subject to execution and sale to satisfy a judgment, if the property subject to liability for a judgment includes any combination of:

- (1) a spouse's separate property;
- (2) community property subject to a spouse's sole management, control, and disposition;
- (3) community property subject to the other spouse's sole management, control, and disposition; and
- (4) community property subject to the spouses' joint management, control, and disposition.

(b) In determining the order in which particular property is subject to execution and sale, the judge shall consider the facts surrounding the transaction or occurrence on which the suit is based.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Further, Plaintiff Leonida Butcher dba JC Lion Properties seeks a declaration that the four properties are special community property, controlled exclusively by her; that James Butcher has no control over the properties; that the four properties are not burdened by a judgment lien; and that Defendants may not reach, sell, or attach the four properties through a writ of execution or otherwise.

Additionally, Plaintiffs would show that Texas law protects a person from the liability of her spouse. More specifically the Texas Family Code, Chapter 3 is very clear in the matter that Leonida Butcher is not personally liable for the actions/debts of James D. Butcher. The relevant provisions provide as follows:

Sec. 3.201. SPOUSAL LIABILITY.

(a) A person is personally liable for the acts of the person's spouse only if: (1) the spouse acts as an agent for the person; or (2) the spouse incurs a debt for necessities as provided by Subchapter F, Chapter 2.

(b) Except as provided by this subchapter, community property is not subject to a liability that arises from an act of a spouse.

(c) A spouse does not act as an agent for the other spouse solely because of the marriage relationship.

In this case, Plaintiff James Butcher did not act as an agent for Leonida Butcher and Defendants' judgments are not based on a debt necessities.

Section 3.202 of the Texas Family Code provides that "Unless both spouses are personally liable as provided by this subchapter, the community property subject to a spouse's sole management, control, and disposition is not subject to... (2) any non-tortious liabilities that the other spouse incurs during marriage."

As exhibited earlier, James D Butcher has no authority in regards to the management and control of the four properties. Further, the four properties are under Leonida Butcher's sole management and control. The referenced properties are under the sole management of Leonida Butcher and are, at the very least, her sole management community property. Section 3.202 of the Texas Family Code expressly provides that community property subject to the spouse's sole management, control, and disposition is NOT liable for the spouse's debt.

The four properties referenced in this suit are under Leonida Butcher's sole management, control, and disposition. Leonida Butcher is not personally liable and has no business relationship with the Defendants.

Sec. 3.202. RULES OF MARITAL PROPERTY LIABILITY.

(a) A spouse's separate property is not subject to liabilities of the other spouse unless both spouses are liable by other rules of law.

(b) Unless both spouses are personally liable as provided by this subchapter, the community property subject to a spouse's sole management, control, and disposition is not subject to: (1) any liabilities that the other spouse incurred before marriage; or (2) any non-tortious liabilities that the other spouse incurs during marriage.

(c) The community property subject to a spouse's sole or joint management, control, and disposition is subject to the liabilities incurred by the spouse before or during marriage.

(d) All community property is subject to tortious liability of either spouse incurred during marriage.

(e) For purposes of this section, all retirement allowances, annuities, accumulated contributions, optional benefits, and money in the various public retirement system accounts of this state that are community property subject to the participating spouse's sole management, control, and disposition are not subject to any claim for payment of a criminal restitution judgment entered against the nonparticipant spouse except to the extent of the nonparticipant spouse's interest as determined in a qualified domestic relations order under Chapter 804, Government Code.

Additionally, the debts incurred by James Butcher, which gave rise to the Defendants' judgments against him, are a non-tortious liability. The referenced properties are not within the reach of any lien claimed by the Defendants against James Butcher.

Furthermore, pursuant to Section 3.104 of the Texas Family Code, Leonida Butcher's property interest in these four properties is presumed to be under her sole management and control.

Plaintiff Leona Butcher, dba JC Lion Properties, asks this Court to declare that, as between Leonida and James Butcher, the referenced property is special community property subject to Leonida Butcher's sole management and control and that Plaintiff James Butcher has no control of same and that Defendants may not reach, sell, or attach the referenced Properties through a writ of execution or otherwise.

- ***Suit to Remove Cloud on Title***

Plaintiff hereby incorporates all the above paragraphs herein, as if fully set forth here.

In addition to the foregoing, but without waiving same, Plaintiffs allege that they have shown that Plaintiff James Butcher does not have any viable management or control over the four properties involved in this suit. Plaintiffs are asking the Court to enter an order to remove any cloud that exists on the four properties at issue. Plaintiffs ask the court remove any cloud on Plaintiff Leonida Butcher, dba JC Lion Properties, special community property and Jimmy Butcher's title to the referenced properties.

CONDITIONS PRECEDENT

All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

PRAYER

For these reasons, Plaintiffs request that Defendants be cited to answer and appear herein, and that upon final trial, the Court set forth a declaratory judgment, declaring that the Properties in question are not subject to a lien by Defendants, and that Defendants be permanently enjoined from attempting to execute on such Properties, and a declaration that Leonida Butcher dba JC Lion Properties solely manages and controls the properties, to the exclusion of James Butcher. Plaintiffs prays for such other and further relief at law or in equity to which Plaintiffs are entitled.

Respectfully submitted,
/s/ Paul Hoefker
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CERTIFICATE OF SERVICE

This pleading was served on Defendants pursuant to the TRCP on August 16, 2023.

/s/ Paul Hoefker
Paul A. Hoefker

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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 Filing Code Description: Amended Filing
 Filing Description: PL First Amended Petition
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